

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

IN RE: ) Case No. 18 C 864  
DEALER MANAGEMENT SYSTEMS ) Chicago, Illinois  
ANTITRUST LITIGATION ) June 18, 2018  
1:35 p.m.

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE ROBERT M. DOW, JR.

APPEARANCES:

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Authenticom, et al.: MR. DEREK TAM HO  
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12 ALSO PRESENT:

MR. STEPHEN COTTRELL  
CEO, Authenticom, Inc.

13  
14 MR. MAYER GRASHIN  
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1 (Proceedings heard in open court:)

2 THE CLERK: 18 CV 864, In Re: Dealer Management  
3 Systems Antitrust Litigation.

4 THE COURT: Good afternoon, everybody.

01:35:36

5 MS. WEDGWORTH: Good afternoon.

6 MS. MILLER: Good afternoon.

7 THE COURT: Like an MDL case, a lot of people. Let's  
8 see if I can take my roster here. So plaintiffs. There they  
9 are. Good morning.

01:35:46

10 MR. HO: Good morning -- good afternoon, your Honor.  
11 Derek Ho from Kellogg Hansen. Also here today from Kellogg  
12 Hansen are Michael Nemelka and Joshua Hafenbrack. As your  
13 Honor knows, we represent, among others, Authenticom. And I'd  
14 just like to introduce Authenticom's CEO, Stephen Cottrell,  
15 who's in the gallery.

01:36:03

16 THE COURT: Very good. Good afternoon. Welcome.  
17 It's good to put all the names with faces. Some of you guys I  
18 know.

19 Okay, Professor, nice to see you.

01:36:13

20 MR. ISSACHAROFF: Good morning, your Honor -- Good  
21 afternoon. It's a pleasure being here. I'm liaison counsel  
22 and I've been working with Mr. Ho in this case. Issacharoff,  
23 I-s-s-a-c-h-a-r-o-f-f.

24 THE COURT: All right. Mr. Barz.

01:36:28

25 MR. BARZ: Good afternoon, your Honor. Jim Barz.

1 I'm on the plaintiff's steering committee on the dealer case,  
2 and Ms. Wedgworth is lead.

3 MS. WEDGWORTH: Good morning -- good afternoon, your  
4 Honor, Peggy Wedgworth from Milberg representing --

01:36:38

5 THE COURT: This 1:30 is tricking everybody.

6 (Laughter.)

7 MS. WEDGWORTH: I'll turn it around. Representing  
8 the class dealership plaintiffs.

01:36:47

9 THE COURT: Okay. Very good. Ms. McNulty is behind  
10 Mr. Barz.

11 MS. McNULTY: Good afternoon.

12 THE COURT: Did I with get everybody on this side?  
13 Okay, great.

14 Ms. Miller?

01:36:53

15 MS. MILLER: Good afternoon, your Honor. Britt  
16 Miller, Mayer Brown, on behalf of CDK Global, LLC, and  
17 Computerized Vehicle Registration.

18 With me is my partner, Matt Provance, and also  
19 in-house counsel for CDK, Mayer Grashin, is in the gallery.

01:37:07

20 THE COURT: Okay. Very good.

21 MS. GULLEY: Good afternoon, your Honor. Aundrea  
22 Gulley, Gibbs & Bruns, on behalf of Reynolds and Reynolds  
23 Company, a defendant in some and in all of the cases. I am  
24 here with Michael Cohen and Leo Caseria.

01:37:24

25 THE COURT: Okay. Well, good afternoon. Good to see

1 you all. I will eventually learn all of you guys' names and  
2 faces, I'm sure. I said to Kassie -- this is Kassie, my law  
3 clerk, and Kassie is a refugee from Kirkland, and she's worked  
4 on some antitrust cases. I think she worked on Judge  
5 Proctor's case, which is an antitrust case MDL that's down in  
6 Birmingham, so she's had some experience in this. And you  
7 guys have already been citing my previous antitrust MDL I saw  
8 in the briefs here.

9 I met with Judge St. Eve this morning, too, and she's  
10 kept me up to speed on this from even before it got reassigned  
11 to me, so I've got some idea of what's going on here, but an  
12 enormous homework assignment in front of me is to pick this  
13 up.

14 You all can -- everybody who wants to be seated, can  
15 be seated. You don't all have to stand here for the entire  
16 time.

17 Let me start by putting on the record what you guys  
18 already know, which is that I was a partner at Mayer Brown. I  
19 think I've got people on both sides of this case who were at  
20 Mayer Brown with me, so I'm sure all of you guys know that.

21 And the code of conduct rules require me to recuse  
22 from Mayer Brown cases for five years. I recused for  
23 ten years in an abundance of caution, but once I hit ten years  
24 here, I thought it was time and I probably was far enough  
25 removed that I don't even know all the Mayer Brown people on

1 this case, so I wanted to put that on the record. I know you  
2 guys know that.

3 The irony of this is I think I worked more with  
4 Mr. Panter than I did with Ms. Miller when I was at Mayer  
01:38:50 5 Brown because we did all kinds of telecom cases together,  
6 including *Trinko*, and *Twombly* I think we probably worked on  
7 with you guys, too.

8 So I have connections to people on all sides of this  
9 case, as I already explained to Kassie this morning, so -- but  
01:39:07 10 I wanted that to be of record because the rest of the world  
11 may not know what you guys know and someone who reads this  
12 transcript some day.

13 Anyway, I'm really -- I love MDL cases, and I'm  
14 really glad to have you guys. I know this is going to be a  
01:39:20 15 really fun and interesting case for me. It's going to be a  
16 lot of work for all of us, and I know I am woefully  
17 underprepared today to tackle anything except to find out what  
18 my homework assignments are, because this case was transferred  
19 to me about three weeks ago.

01:39:34 20 The week it was transferred, I was on trial. I did  
21 have a chance to talk to Judge St. Eve both before and after  
22 that because I knew that the hammer was going to drop on me  
23 here. And I'm delighted actually, I really think this is  
24 going to be interesting, and MDL cases come with good lawyers,  
01:39:52 25 which is also really nice.

1           Let me tell you what little I know, and what I  
2 understand my homework assignments to be, and then you guys  
3 can help me out with the rest of this. So here's the easy  
4 part.

01:40:02

5           There's two motions to seal that are pending right  
6 now, 192 and 207. I take it no one's objecting to that, and  
7 everybody's going to file a lot of stuff under seal in this  
8 case, so those are good to go?

9           MS. MILLER: Yes, your Honor.

01:40:14

10          MS. GULLEY: Yes, your Honor.

11          MS. WEDGWORTH: Yes, your Honor.

12          THE COURT: Excellent. Chorus of yeses. Okay. So,  
13 Carolyn, 192 and 207 can be granted.

01:40:24

14          The next one that I wanted to talk about is 202, and  
15 that's the motion to appoint Mr. Ho as interim lead counsel  
16 for the vendor class.

17          Anybody have any comments on that motion?

01:40:37

18          MS. MILLER: Just to comment, your Honor, we're not  
19 sure why it's ripe at this point. From our standpoint, it's  
20 premature. The rules and the committee notes clearly say that  
21 you appoint interim lead counsel if there's a conflict, if  
22 there's more than one person vying for it, if there's the  
23 possibility of uncertainty.

01:40:53

24          This wasn't a class action until two weeks ago. The  
25 action was originally filed as an individual action on behalf



1 of just AutoLoop. There are no other counsel vying for -- to  
2 represent the vendor class, and so unless and until there  
3 comes a time that there is a conflict and there needs to be  
4 the appointment of interim lead counsel, we just don't see a  
5 reason for there to be an appointment at this time.

01:41:10

6 THE COURT: Okay. Mr. Ho?

7 MS. WEDGWORTH: Your --

8 THE COURT: Anybody can speak up if they wish.

9 MS. WEDGWORTH: Well, and also with regard to the

01:41:19

10 dealership class, we take no position on Mr. Ho's motion as to  
11 lead counsel. We do note, as Ms. Miller just pointed out,  
12 there may be conflict at some point in the future. At some  
13 point damages issues will have the pass-on issue with regard  
14 to vendors versus class dealership, so we just note that right  
15 now, but we take no position on this motion.

01:41:37

16 THE COURT: Okay.

17 MR. HO: Professor Issacharoff has been advising us  
18 on this, but I'll say for starters that as your Honor knows, I  
19 am already one of the two co-lead counsels of this MDL, so one  
20 of the reasons we wanted to front this motion with the Court  
21 is just to have clarity as to who it is that we are  
22 representing. We obviously have individual clients, including  
23 Authenticom, Cox and VSC. We have applied now to be interim  
24 lead counsel for a class of similarly situated vendors who are  
25 essentially direct purchasers of the data integration services

01:41:51

01:42:12

1 that are at the core of this case.

2 So in our view, it is helpful to rounding out the  
3 leadership of the MDL, the structure of this MDL, to have  
4 clarity and certainty around which clients we represent in  
5 this MDL. I don't know if Professor Issacharoff has more to  
6 add.

7 MR. ISSACHAROFF: Just one point, your Honor, on the  
8 timing question. One of the reasons for the creation of the  
9 interim class counsel mechanism in the rules in the past  
10 decade and a half is precisely so that we know who's  
11 responsible for making certain kinds of decisions.

12 Ms. Wedgworth correctly says that there could be  
13 conflicts down the road. We don't think there will be, but  
14 there could be between the dealers and the vendors. It's  
15 important that somebody be able to speak right from now for  
16 the vendors as a whole, and the appointment of interim counsel  
17 just imposes certain duties on Mr. Ho but gives him no other  
18 benefits.

19 So it's a creation of an accountability mechanism  
20 because decisions will be made in the course of discovery and  
21 so forth that will affect these folks, and they deserve to  
22 have somebody formally designated as their counsel at this  
23 point, the interim counsel. With class certification decision  
24 obviously being pushed down the road, I think this is faithful  
25 to exactly why the new rule was created.

1 THE COURT: And I suppose that the potential benefit  
2 of it is as you within the leadership of the -- on the  
3 plaintiffs' side see issues that might fall under this realm  
4 of potential conflicts, you know who speaks for whom, is  
5 that --

01:43:50

6 MR. ISSACHAROFF: That's exactly right, and one of  
7 the reasons that we proposed -- my role in this is this  
8 strange new creation that Judge St. Eve liked of the liaison  
9 counsel was to try to figure out if that's coming and then to  
10 try to head it off in some fashion, and I think it's better,  
11 if there are potential conflicts, not to leave some group  
12 exposed and unrepresented altogether.

01:44:04

13 And that's why we propose doing this at this time,  
14 and we think that rounds out both the leadership structure and  
15 the responsibility and fiduciary duties in the case.

01:44:20

16 THE COURT: Okay. And how are the -- how would the  
17 defendants be prejudiced in any way by this?

18 MS. MILLER: The concern we have is twofold. One,  
19 that it's premature; but also there is an existing potential  
20 conflict right now.

01:44:35

21 Kellogg Hansen, in addition to representing  
22 Authenticom and MVSC and Cox and AutoLoop, also represents a  
23 dealer, and Ms. Wedgworth properly pointed out that at some  
24 point if we get to the point where we're at damages or  
25 otherwise, the vendors are going to be saying we want to --

01:44:51

1 that we kept all of the damages and we didn't pass any on, and  
2 the dealers are going to be saying, well, it all got passed on  
3 to us.

4 And so the fact that Kellogg Hansen now represents  
01:45:05 5 pretty much one entity in every level of the chain creates a  
6 potential conflict now. And the case law at least we think is  
7 clear, including as to the committee notes, it says that if  
8 there's one law firm that is representing one plaintiff in a  
9 putative class action, there's no need to appoint someone.

01:45:27 10 That named plaintiff and that named counsel will continue to  
11 represent the named plaintiff and the putative class without a  
12 formal interim appointment.

13 THE COURT: Now, everybody is interim in the sense  
14 that if anything comes up in the future that would create  
01:45:41 15 conflicts or otherwise, I mean I had my first -- you can go  
16 through the 800 docket entries of my first antitrust MDL and  
17 see that there was an issue that came up amongst counsel, and  
18 we ended up having to take someone off the PSC basically. So  
19 everybody's interim in that sense, I suppose.

01:46:01 20 But I guess without being able to touch my fingers on  
21 any of these cases right now, if you want to file something  
22 that tells me your position, that's fine. I don't think  
23 there's any great urgency to this because you guys are all  
24 going to be in the -- the conflict is unlikely to manifest  
01:46:18 25 itself in the next month if it hasn't already done so. So if

1 you want to file something, how soon can you do it? If you  
2 want to comment on this motion?

3 MS. MILLER: To the extent we decide to file  
4 something, we could file it this week if you'd like.

01:46:29

5 THE COURT: I don't even -- I'll give you a whole  
6 week if you want.

7 MS. MILLER: Fair enough.

01:46:37

8 THE COURT: So next Monday. And if you guys want to  
9 reply to that if they file something in a week after that,  
10 would that be do-able?

11 MR. ISSACHAROFF: Yes.

01:46:48

12 THE COURT: Nobody thinks there's any great urgency  
13 to resolving this, right? This is really a prophylactic thing  
14 to keep all the lines clear, but, you know, you guys are  
15 co-lead counsel, and you're responsible for everybody, and  
16 you've got this team behind you that's responsible for  
17 everybody, and the professor is overseeing or helping you guys  
18 out, not only in this fashion but also in the fashion of a war  
19 team and a peace team, I think I saw in there. So there's no  
20 issue with giving you guys two weeks to kick this around?

01:47:06

21 MR. ISSACHAROFF: Not from our standpoint, your  
22 Honor.

23 THE COURT: Okay. So today is the 18th.

24 THE CLERK: 6/25 and 7/2.

01:47:17

25 THE COURT: Okay. Great. And then I'll take a look

1 at this, and if I have further questions for you, I'll let you  
2 know.

3 We'll set another date at the end here, too, that  
4 will work for everybody to come back, and I hope by then I've  
5 had more than -- this weekend really is what I had to start  
6 tackling what you guys had for me.

7 MR. HO: And, your Honor, if I may address one quick  
8 thing so there's no misunderstanding between us and  
9 Ms. Miller.

10 We did initially file a case on behalf of the dealer,  
11 but Ms. Wedgworth represents the putative dealer class. It's  
12 up to Ms. Wedgworth whether she wants to include the dealer  
13 that we represented as a named plaintiff or in some other  
14 fashion. So from our standpoint, yeah, that's in  
15 Ms. Wedgworth's hands as opposed to ours at this point.

16 THE COURT: So what you're proposing then is  
17 basically you guys are the vendors and they're the dealers  
18 amongst this two-headed leadership with all the other  
19 subheads.

20 MR. HO: And there's also a competitor -- several  
21 competitor cases as well, but as between the vendors and  
22 dealers, you're exactly right, your Honor. We wouldn't be,  
23 you know, continuing to pursue claims on behalf of the dealers  
24 except insofar as Ms. Wedgworth wants to use the dealer that  
25 we represented as part of her class action.

1 THE COURT: And if I understand it that way, then  
2 your proposal to become interim lead counsel for the vendor  
3 class is completely consistent with the two-headed monster  
4 that you guys are, right?

01:48:38

5 MR. HO: Correct, your Honor.

6 THE COURT: Okay.

7 MS. MILLER: And we certainly appreciate the  
8 clarification. The reason this came up is because on a  
9 meet-and-confer call a handful of days ago, Kellogg Hansen  
10 specifically said that they still represented Bob Baker, which  
11 is a dealer, and that they hadn't dismissed their complaint  
12 and thereby leaving the impression that they were continuing  
13 to pursue and represent a dealer.

01:48:49

14 So we had no reason -- we appreciate that he's now  
15 saying that he's not, but there are a number of -- there are  
16 seven dealers that filed suit, eight total, but one has  
17 already voluntarily dismissed. There are seven dealer  
18 plaintiffs, including Bob Baker Volkswagen represented by  
19 Kellogg Hansen that filed suit originally but are not named  
20 plaintiffs in the consolidated amended class action complaint.

01:49:01

01:49:18

21 And if it's plaintiff's position that those people  
22 are no longer named plaintiffs in any way, then we're fine.  
23 But, otherwise, we need to know if they're -- are they  
24 opt-outs? Are they going to be participating in discovery?  
25 Do we have to move to dismiss their complaint? Because

01:49:35

1 technically, as Mr. Nemelka pointed out on the  
2 meet-and-confer, he hasn't dismissed his Bob Baker Volkswagen,  
3 so he was clearly taking the position that the consolidated  
4 amended complaint did not supersede his individual complaint.

01:49:51

5 MR. ISSACHAROFF: Your Honor, if I may address that.  
6 As the Court knows, the Supreme Court just ruled on statutes  
7 of limitations and what the tolling is. We could not possibly  
8 dismiss the complaint on behalf of our individual client  
9 because it is perfectly possible that this Court will reject  
10 all class certifications, and there will be only individual  
11 cases left in the MDL.

01:50:07

12 And so we're not going to dismiss. That would be --  
13 that would be a breach of our duty to the client. And so the  
14 fact that this is sitting there in abeyance pending class  
15 certification issues on the dealer side is of no moment.

01:50:22

16 THE COURT: And obviously the two -- the two co-leads  
17 are going to have to work together and coordinate one way or  
18 the other, but I guess what you guys are telling me, and it's  
19 consistent with the idea of proposing an interim lead counsel  
20 for the vendor class, is that on the vendor side, Mr. Ho is  
21 going to be doing the talking, and then on the dealer side,  
22 Ms. Wedgworth is going to be doing the talking, and to the  
23 extent that there's any conflict, you guys know what side you  
24 have to stand on, right?

01:50:41

01:50:59

25 MS. WEDGWORTH: Correct.



1 MR. HO: Yes, your Honor.

2 MS. GULLEY: Your Honor, just so I understand -- this  
3 is Aundrea Gulley again.

01:51:07

4 I believe what Professor Issacharoff just said,  
5 however, is that those are opt-outs. That's the whole point  
6 of the Supreme Court's ruling on -- you know, in that  
7 securities case, whether or not the statute of limitations is  
8 tolled for -- you know, during the pending of the class  
9 certification.

01:51:20

10 Kellogg Hansen represents a dealer, and what I  
11 believe the professor is saying is Kellogg continues to  
12 represent a dealer. So regardless of sort of which position  
13 they're taking, as between the two of them, they still do have  
14 a dealer client; and, therefore, there is, by definition, this  
15 conflict between the pass-through and the non-pass-through,  
16 and that they are not going to be dismissing the case. So  
17 just to be clear.

01:51:41

18 THE COURT: Well, let me see if I can unpack that a  
19 little bit, though, because it's certainly conceivable, I can  
20 understand in light of that Supreme Court case they don't want  
21 to dismiss the case, but that doesn't mean they can't  
22 substitute counsel or something like that.

01:51:53

23 MR. ISSACHAROFF: Absolutely, your Honor.

24 THE COURT: Maybe that's the thing you guys should be  
25 thinking about.

01:52:04

01:52:14 1 MR. ISSACHAROFF: We might do that. It depends on  
2 this Court's rulings down the road, depends how the case  
3 matures, but I think one of the questions that your Honor  
4 asked of the defense side is how are they prejudiced by any of  
5 this? They're raising abstract questions of conflict.  
6 They're not conflicted. We're not conflicted with them on  
7 this issue.

01:52:27 8 This is something that we will work out with  
9 Ms. Wedgworth as the case matures and as we see what the class  
10 certification rulings of this Court will be.

11 THE COURT: And that's long into the future,  
12 according to the schedule I just looked at.

01:52:38 13 MR. ISSACHAROFF: That's correct, your Honor.  
14 There's nothing -- there's nothing operative in this right now  
15 in terms of the discovery necessary for Authenticom to get to  
16 trial, which is the main driving engine right now.

01:52:56 17 And in the meantime, Ms. Wedgworth will represent the  
18 dealer class. Our proposal is that Mr. Ho represents what  
19 we've called the vendor class and that the case proceed with  
20 these two silos, these two tracks, coordinated, which is the  
21 way it has been effectively.

01:53:11 22 THE COURT: Well, and you guys can mention in your  
23 briefs, if you like, how this all plays out at the moment,  
24 which is all -- I mean, as I said, everything is sort of  
25 interim in an MDL in the sense that things come up and things

1 move and things change, and I don't know if the answer -- if  
2 there's anything at the moment. If there's no present  
3 conflict, then I don't know what the big issue would be, but  
4 if you see something, you can tell me what it is, and you can  
5 think about whether -- I mean, it's all one big case  
6 obviously, but if someone substituted for Kellogg on the one  
7 dealer case that they're still involved in, as long as the  
8 plaintiff isn't prejudiced by having the case dismissed, does  
9 it really matter who the named lawyer is in the case? They're  
10 all going to be part of the big case, and they may be part of  
11 the class, and they may be a named plaintiff, they may not be,  
12 may be an absent member.

13 But one way or the other, it sounds like this is a  
14 very small gnat on the tail of a very large elephant, but you  
15 guys can explain to me if it's more than that at the moment,  
16 and if it is, then, fine, I'll deal with it sooner than later.  
17 If not, let me get to the thing that is on my plate right now  
18 that's of I think greater moment to you guys, and that's the  
19 other motion that I see still has a gavel next to it, and  
20 that's 195.

21 And I was going to ask for a reply brief today, but  
22 lo and behold, there it was this morning when I went on the  
23 docket. So that appears to be fully briefed. I had a brief  
24 conversation with Judge St. Eve about it this morning, and I  
25 basically said it sounds like they don't necessarily agree

1 about what you said before. And I said I'm only going to  
2 bother with you with this if I get to the end of my own  
3 archaeology project and I still can't figure it out, but  
4 that's an archaeology project for me is to go back and look at  
01:54:45 5 Authenticom and look at what happened with Judge Peterson and  
6 then look at what the Seventh Circuit said and then look at  
7 what you guys agreed to, it looks like, and look at how that  
8 squares with Judge St. Eve's order and how that squares with  
9 the compliance with the order and where that leaves us between  
01:55:01 10 600,000 documents and 2.2 million.

11 But that I haven't gotten to yet, and once I get  
12 through the briefs and the digging through the layers, if I'm  
13 still baffled, I will probably call her first, and then I'll  
14 call you guys and say you've got to come in and help explain  
01:55:19 15 this to me.

16 I will do my best to figure this out on my own, but I  
17 know I have places I can go and I know you guys are all really  
18 good and you will give me what I need when I need it or  
19 sooner, as the case was this morning. I said to it must have  
01:55:36 20 been my wife because I wouldn't have said this, no one else in  
21 the house would care, but I said I think I'm going to have to  
22 ask for a reply brief this morning, and then there it was when  
23 I looked at the docket this morning.

24 But I will say I have only given those a once-over.  
01:55:47 25 I think the response brief maybe came in Friday, does that

1 sound right?

2 MS. WEDGWORTH: Yes, your Honor.

3 MR. HO: Yes.

01:55:54

4 THE COURT: So I gave them a once-over with the  
5 hundreds of other pages I read this weekend trying to get up  
6 to speed.

01:56:09

7 I did say to Judge St. Eve how grateful I was that  
8 she sorted out all of the counsel situations and also gave me  
9 a scheduling order, which has now been entered by a Seventh  
10 Circuit judge, so I feel very good that we'll be able to stick  
11 to that scheduling order as best we can.

01:56:25

12 All cases come up with things that happen in the  
13 interim, but I will do my best to adhere to that. I know you  
14 guys are steering between the Scylla of the Seventh Circuit  
15 opinion and the Charybdis of the MDL proceeding, so I'm going  
16 to try to, you know, keep us on course there, but I appreciate  
17 all that you guys have done and all that she did to hand me  
18 off an MDL that's in really good shape with great lawyers.

01:56:44

19 In my other MDLs, you may have seen that I have been  
20 blessed with Judge Gilbert on both of them, and I'm blessed  
21 with Judge Gilbert again on this one. And he was a commercial  
22 litigator for 25 or 30 years at a big firm in Chicago, so he's  
23 really, really well-situated to help us.

01:57:00

24 I don't at the moment see anything that he needs to  
25 help us with, but I think you guys should expect that if there

1 are some complicated discovery issues in this case, I will get  
2 him involved. He's been absolutely spectacular in my other  
3 MDLs, and if the JPML ever has a panel that invites magistrate  
4 judges, I'm going to nominate him to come down to The Breakers  
5 because he knows a lot and he's been very helpful on this, so  
6 don't be surprised to see him at some point.

7 We've sat in two-judge panels for our MDL hearings  
8 before, too, so everybody can get us up to speed at once.

9 And the other thing on my schedule is when should I  
10 see you guys again? I looked on the calendar, and it looks to  
11 me that if you have motions to compel besides the one that I  
12 already have, which is sort of the backwards of a motion to  
13 compel, that those are due in early August. So I thought  
14 maybe what I would do is set you guys for a status in  
15 mid-August, see if anything comes in there.

16 If it doesn't come in there, we'll all rejoice and be  
17 glad, but you guys can still, you know, get me up to speed on  
18 where things are going, how things are going, how else I can  
19 help you. And you should also know that any time you guys  
20 need to see me -- and the *Fluidmaster* people knew this and  
21 still know it, and the cheese people knew it, too -- you can  
22 always call Carolyn if you need to come and see me, and we'll  
23 get you in as soon as we can at any time, because obviously  
24 judicial case management is really important in all cases but  
25 especially in MDLs. So any time you guys feel the need to see

1 me, just make the suggestion to Carolyn, and I won't run you  
2 off.

3 But does that sound okay? Does mid-August sound like  
4 a good time to come back, or is there anything you guys  
5 anticipate that you need to see me before then?

01:58:40

6 MS. GULLEY: Mid-August.

7 THE COURT: I will give you a ruling on this motion  
8 before then, and if I need more help, I will see you long  
9 before then.

01:58:50

10 But is there anything you guys see on your schedule  
11 or in your, you know, whatever private conversations you guys  
12 are having about this case that would be helpful to see a  
13 judge before mid-August?

14 MS. MILLER: No.

01:58:59

15 THE COURT: Everybody okay with that?

16 MS. GULLEY: That's great.

17 MS. WEDGWORTH: That works for us, your Honor.

18 MR. HO: Yes, your Honor.

19 THE COURT: Okay. I'm going to give you a date now  
20 with the knowledge that I'm going to offer every week, though,  
21 I have open in August to some people who tell me they need a  
22 trial date with a criminal defendant in custody tomorrow, and  
23 if that happens, I may move you guys. It looks -- it's a gun  
24 case, a 922, so I don't think it's going to be a long trial,  
25 but I don't want to have you guys come the same day I have a

01:59:05

01:59:22

1 jury here because I want to make sure I've got plenty of time  
2 for you.

3 But for now let's put you guys in -- how is the 16th  
4 for you guys?

01:59:35

5 MS. GULLEY: That's great, your Honor.

6 THE COURT: Is that okay?

7 MS. WEDGWORTH: Yes, your Honor.

8 THE COURT: Okay. And, Carolyn, I want to put these  
9 guys at a time where nobody else is behind them.

01:59:40

10 THE CLERK: Any time is good.

11 THE COURT: Any time is good.

12 That's because we were supposed to have a trial  
13 that's supposed to be a month with a pro se defendant starting  
14 that week, but the Supreme Court took that out of our hands in  
15 some case they GVR'd to the Seventh Circuit, so I'm happy  
16 about that. You guys are going to be much easier than a pro  
17 se criminal trial for a month no matter what you give me.

01:59:52

18 So let's do it at 10:30 that day because some motions  
19 and statuses are going to fill in there if that's okay for you  
20 guys. I know some of you all are coming from New York and  
21 Washington, and that works well for you guys --

02:00:06

22 MS. GULLEY: Houston.

23 THE COURT: Where, Houston?

24 MS. GULLEY: Yes.

02:00:13

25 THE COURT: Well, that's in the same time zone.



1 Everybody who's coming from the East, this works well coming  
2 this way because you get the hour back so you land half an  
3 hour after you took off in clock time because if we do it at  
4 10:30 you conceivably, O'Hare permitting, get here at the same  
5 day. Probably won't risk that.

02:00:31

6 MR. HO: Probably not, your Honor.

7 THE COURT: Yeah, okay.

8 (Laughter.)

9 THE COURT: All right. Anything else that I can help  
10 you guys with today?

02:00:39

11 MS. MILLER: I have a couple of housekeeping things,  
12 your Honor, if we may.

13 THE COURT: Great.

14 MS. MILLER: On AutoLoop on the new putative vendor  
15 class, they filed a -- the complaint instead of responding to  
16 our motion to dismiss, but we've reached agreement with Mr. Ho  
17 for a briefing schedule for our motion to dismiss the new  
18 complaint.

02:00:48

19 THE COURT: Okay. Now, help me out here, just give  
20 me some numbers.

02:01:01

21 MS. MILLER: Sure.

22 THE COURT: What's the number of the complaint we're  
23 after?

24 MS. MILLER: The complaint for AutoLoop is Docket  
25 194.

02:01:06

1 THE COURT: 194, yeah, that's the sealed one. 191 is  
2 the public version. 192 is the permission to seal it.

3 Okay, perfect. So 194, you want to move to dismiss  
4 that.

02:01:19

5 MS. MILLER: Yes.

6 THE COURT: And you've got an agreement on the  
7 schedule, so fire away.

02:01:28

8 MS. MILLER: We put it on the same schedule that the  
9 motion to dismiss the dealer class complaint is on, so we will  
10 file our motion to dismiss by July 11th.

11 THE COURT: Okay.

12 MS. MILLER: And then plaintiffs' response would be  
13 due August 1st, and the reply would be due August 15th.

14 THE COURT: Okay. Perfect. Thank you.

02:01:42

15 MS. MILLER: That's housekeeping No. 1.

16 THE COURT: Okay.

02:01:55

17 MS. MILLER: Housekeeping No. 2, as your Honor is  
18 likely aware from the case management schedule, all of our  
19 discovery responses for both sides are due this Friday with  
20 the exception of one defendant who's still waiting on  
21 discovery to be served on it.

22 THE COURT: Okay.

23 MS. MILLER: But also due this Friday is our answers  
24 and counterclaims to the Authenticom complaint.

02:02:14

25 THE COURT: Okay. I see response to discovery,

1 June 22nd.

2 MS. MILLER: It's -- your Honor, St. Eve -- Judge St.  
3 Eve put a separate minute order in setting a schedule.

4 THE COURT: Ah, okay.

02:02:24

5 MS. MILLER: At Docket No. 175 was her minute order.

6 THE COURT: 175. Okay. So you want to adjust those  
7 schedules?

02:02:35

8 MS. MILLER: Your Honor, we'd like an extra week, if  
9 we could, to file our answer and counterclaims. They're  
10 currently due on Friday, the 22nd.

11 Given the discovery obligations we have, we would  
12 appreciate an additional week.

13 THE COURT: Okay. So that would be we'd amend 175,  
14 the schedule set in 175, to give you 6/29 instead of 6/22.

02:02:49

15 MS. MILLER: Yes, your Honor.

16 THE COURT: Okay. Everybody good with that?

17 MS. WEDGWORTH: I am certainly good with it, but that  
18 is Mr. Ho's call.

19 THE COURT: Okay.

02:02:57

20 MR. HO: Your Honor, this is the first I'm hearing  
21 about it, but I think we're fine with the extra week.

22 THE COURT: Okay. Sold. Extra week.

23 MS. MILLER: Thank you.

24 THE COURT: 6/29.

02:03:05

25 And then the 6/22 -- so that's what you're going to

1 do, between now and Friday you're going to get your discovery  
2 responses done, and then you're going to start cranking the  
3 answer out next weekend.

4 MS. GULLEY: And counterclaims.

02:03:16

5 THE COURT: And counterclaims, of course. Okay.

6 All right. That's fine. Anything else on the  
7 housekeeping?

8 MS. MILLER: The only other issue, and we're happy to  
9 take it up with counsel, but the amended class action

02:03:26

10 complaints that have been filed are fairly, as I'm sure your  
11 Honor has noted, voluminous. We are going to need more than  
12 15 pages to respond to each of them. We're happy to discuss  
13 page limits with opposing counsel and, if we can't reach  
14 agreement, bring it back to you.

02:03:39

15 THE COURT: That's fine. Discuss amongst yourselves.

16 MS. MILLER: Fair enough.

17 THE COURT: As many of you know, I was an appellate  
18 lawyer in practice. I was not a trial lawyer, and I was very  
19 bummed out when the Illinois Supreme Court took us from 75 to  
20 50. How can we live with this?

02:03:51

21 It turns out you can write everything you need to  
22 write in 50. 15 is a little tight now I know for a case like  
23 this. You can scour the 1700-minute -- 1700 entries in the  
24 other antitrust cases and the other MDLs I've had and look for  
25 all the motions for leave to file excess pages and see if any

02:04:10

1 of them have ever been denied. I don't think you'd find one.

2 But I would like you to talk amongst yourselves  
3 because I always say goose for the goose, goose for the  
4 gander, however that goes, so if you take 50, they get 50,  
02:04:26 5 too, and that piles up in the end.

6 So talk amongst yourselves. I'm confident you'll  
7 work this one out. If you don't, that's what I'm here for.

8 MR. HO: Your Honor, your guidance may actually be  
9 helpful in this regard.

02:04:36 10 Many of the motions to dismiss that are still pending  
11 and relate basically to issues that were also at stake in the  
12 Authenticom motion to dismiss, so many of the -- those issues  
13 have been decided in the context of the Authenticom case, and  
14 I imagine that many of the issues that the defendants might be  
02:04:57 15 tempted to move to dismiss on in AutoLoop are also issues that  
16 were also already decided in Authenticom.

17 I think the briefing could be a lot shorter if both  
18 sides agreed to forgo trying to relitigate those issues  
19 because at least from our standpoint, they're law of the case.  
02:05:14 20 They're not really subject to being relitigated. That, from  
21 our standpoint, would significantly shorten the number of  
22 pages that would be required because all that would have to be  
23 done is to move to dismiss on any issues that were not already  
24 addressed in Authenticom.

02:05:29 25 And in the context of AutoLoop, I don't think that

1 there are actually that many outstanding issues.

2 THE COURT: Okay.

3 MS. MILLER: Your Honor, it will probably not  
4 surprise you that the two sides take a different perspective  
5 on exactly what that decision says in terms of --

02:05:39

6 THE COURT: Well, I already told Judge St. Eve you  
7 take a different position on what she's previously said about  
8 the scope of discovery, so that wouldn't surprise me.

9 MS. MILLER: So we'd like to -- we'd like to brief  
10 the issues. We're not -- we don't -- for AutoLoop, we don't  
11 anticipate seeking many more the 15. The class complaint is a  
12 little different. It's 700-some-odd paragraphs, 50 counts and  
13 61 exhibits, so we're certainly going to need more there.

02:05:52

14 But we will certainly work to keep it as short as we  
15 can, but we believe that certainly we need to address how we  
16 think the Authenticom opinion affects these other motions.

02:06:10

17 THE COURT: Well, and I think to Mr. Ho's point, I  
18 think you can anticipate that the very first thing I'm going  
19 to read is Judge St. Eve's opinion, and I thanked her for the  
20 52 pages of work that she absolutely 100 percent could have  
21 left for me and decided not to because she's a nice person and  
22 also very on top of things, so she was able to crank out a  
23 52-page opinion while she was trying to, you know, move her  
24 office.

02:06:28

25 But that's where I will start, and if you guys want

02:06:40

02:06:58

1 to incorporate things that you previously said to her in  
2 briefs that are on my docket or you want to work off of that  
3 opinion to say it's either right or it's wrong, I mean  
4 obviously it is law of the case and obviously it is pretty  
5 recent, but if you guys want to work off that to shortcut  
6 things, you're more than welcome. I can just tell you that's  
7 where I'll start. Anyone would start there.

02:07:15

8 So, you know, the shorter you can make them the  
9 better, but I get it. I'm happy to read briefs. That's  
10 pretty much what I've done for the last 25 years, so it's all  
11 good.

02:07:26

12 MS. GULLEY: Your Honor, just to be clear, the  
13 Reynolds and Reynolds Company is not a defendant in the vendor  
14 class action, so I take no position.

15 THE COURT: That's okay. I'm looking at both of you,  
16 but I'm really looking at Ms. Miller, okay?

17 MS. MILLER: Thanks, your Honor.

02:07:36

18 MS. GULLEY: With respect to the class complaint, we  
19 are certainly differently situated here. The allegations are  
20 not the same, and so we definitely take a different view with  
21 respect to the much longer class complaint that we'll be  
22 moving to dismiss.

02:07:49

23 THE COURT: Well, when we get to these issues, if you  
24 want to take one step to the side, then I can laser in on  
25 Ms. Miller here. But, yeah, no, I appreciate that, and you

02:08:04

02:08:11

02:08:18

Date \_\_\_\_\_